

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**



ORIGINAL  
WITH PROOF  
OF SERVICE

# 74-2107

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## UNITED STATES COURT OF APPEALS

*for the*

### SECOND CIRCUIT

GEORGE RIOS, et al.,

Plaintiffs-Appellees,

-and-

JOHN GUNTHER, et al.,

Applicants to Intervene-Appellants,

-against-

ENTERPRISE ASSOCIATION STEAMFITTERS LOCAL 638 OF U.A.,  
et al.,

Defendants-Appellees.

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UNITED STATES OF AMERICA (E. E. O. C.),

Plaintiff-Appellee,

-and-

JOHN GUNTHER, et al.,

Applicants to Intervene-Appellants,

-against-

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et al.,

Defendants-Appellees.

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ON APPEAL FROM UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

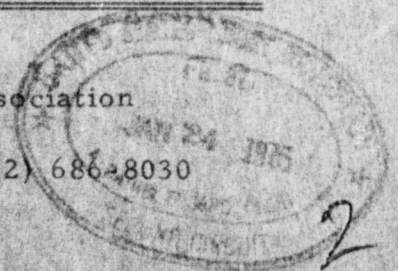
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BRIEF FOR DEFENDANT-APPELLEE  
ENTERPRISE ASSOCIATION STEAMFITTERS LOCAL 638 OF U.A.

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BRIEF FOR DEFENDANT-APPELLEE  
ENTERPRISE ASSOCIATION STEAMFITTERS  
LOCAL 638 of U.A.

Of Counsel,

Richard Brook

## COUNTER-STATEMENT OF ISSUE

Whether the District Court abused its discretion in denying appellants' application to intervene.

## COUNTER-STATEMENT OF THE CASE

### A. The Decision of the District Court

On July 9, 1974 Judge Dudley B. Bonsal, United States District Court Judge, Southern District of New York, denied the appellants' April 17, 1974 motion to intervene. A3a\* That decision was based primarily on the ground that the motion was untimely and on the ground that appellants have no rights to assert in this Title VII case. The complaints in this case were filed in early 1971, the trial was conducted in January, 1973, the Decision and Order were rendered on June 21, 1973, a supplemental Order was made in November, 1973 and the Affirmative Action Plan was adopted and filed on March 29, 1974. The Union appealed from part of the June, 1973 Order and this Court affirmed and remanded the matter on appeal in June, 1974. A separate appeal from the Affirmative Action Plan has been timely filed by the Union, but not yet pursued. (74-1593,1606).

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\*Citations to the Appendix are designated as "A \_\_\_\_".

The District Court in denying the motion to intervene, correctly expressed the nature of this case as follows:

"These consolidated actions were brought under Title VII of the Civil Rights Act of 1964. The purpose of the Court's Order of June 21, 1973 and of the Affirmative Action Plan was to correct past discrimination in the steamfitting industry with respect to nonwhites and to establish procedures to prevent such discrimination in the future." A3a

The Court below denied the motion to intervene as untimely:

"The motion to intervene as a matter of right under Rule 24(a) of the Federal Rules of Civil Procedure is untimely since these Title VII actions have already gone to Judgment and the Judgment has been affirmed by the Court of Appeals. For the same reason, the motion to intervene is untimely under Rule 24(b)." A4a

Contrary to the characterization of Judge Bonsal's Decision in Appellants' Brief, untimeliness was not the sole reason for denying the motion; the District Court stated that:

"Moreover, the provisions of the Affirmative Action Plan are flexible enough to enable the applicants to bring their complaints to the attention of the Administrator for appropriate action. If they are charging the Union with committing an unfair labor practice in violation of the Labor Management Relations Act, 1947 (29 U.S.C. §§ 141 et seq.) or with violating the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. §§ 401-531), their remedy, if any, must lie elsewhere since their claims do not raise issues under Title VII." A4a - 5a

B. The Facts

The facts involving this case are clearly and fully set forth in this Court's Opinion (501 F.2d 622 [1974]) and in the June, 1973 decision of the District Court (360 F. Supp. 979 [S.D.N.Y. 1973], A46a).

It is sufficient to note here that the Union, the employer association it bargains with and their joint apprenticeship committee were sued by the government and a class, both groups of plaintiffs alleging discrimination against blacks and Spanish surnamed individuals (hereinafter "nonwhites") under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. (hereinafter "Title VII"); the Union and other defendants disputed the charges of such discrimination; the District Court found that certain practices did have a discriminatory impact on nonwhites; relief was granted to plaintiffs to cure the alleged discrimination. This Court affirmed the District Court's Order but remanded the case for the purpose of recalculating the percentage goal. Judge Hays dissented.

The Union has cooperated with the Court in accomplishing the aim of increased minority participation. A22a (Affidavit of Vincent E. Brennan, President of the Union); A90a-92a (Affidavit of Richard Brook, Union Attorney); A108a-109a, 111a (Affidavit of John Sheeran, Secretary-Treasurer of the Union).

Much of the recitation of "facts" in Appellants' Brief consists of unproven allegations not contained in the Record nor subject to examination by counsel or judged in terms of their truth by a trier of fact. See A134a (Affidavit

of Sheeran, denying these allegations.)

#### SUMMARY OF ARGUMENT

The District Court properly denied appellants' application to intervene on the ground that the application was untimely and on the ground that in any event appellants do not have a right to intervene in this case.

#### ARGUMENT

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANTS' APPLICATION TO INTERVENE ON THE GROUND THAT THE APPLICATION WAS UNTIMELY. APPELLANTS HAVE NO RIGHT TO INTERVENE IN THIS CASE.

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POINT I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANTS' APPLICATION TO INTERVENE ON THE GROUND THAT SUCH APPLICATION WAS UNTIMELY.

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The District Court ruled that appellants' application to intervene was untimely :

"since these Title VII actions have already gone to Judgment and the Judgment has been affirmed by the Court of Appeals." A4a.

Rule 24(a) of the Federal Rules of Civil Procedure requires a "timely application" to intervene. Appellants' application is extremely untimely. The application was made in April, 1974, over three years after the complaints were

filed in this case; more than one year after trial; ten months after judgment; five months after the November Order; and nineteen days after the Affirmative Action Plan was adopted.

Post-judgment intervention is usually not allowed. 3B Moore's Federal Practice ¶24.13[1], and cases cited therein at note 14; Allegheny Corporation v. Kirby, 344 F.2d 571 (2d Cir.), appeal dismissed, 384 U.S. 28 (1965) (motion for intervention by stockholders seeking to set aside settlement of derivative action was properly denied as untimely, when made at the end of time to file petition for certiorari in protracted case); United States v. Carroll County Board of Education, 427 F.2d 141 (5th Cir. 1970) (black students and parents denied intervention in desegregation case which was five years old and where a judicially approved desegregation plan existed for six months); Iowa State University Research Foundation, Inc. v. Honeywell, Inc., 459 F.2d 447 (8th Cir. 1972) (denial of motion to intervene by alleged joint inventor was proper when motion was made four years after action began, after extensive discovery was completed, and trial had proceeded for over one month); Gerstle v. Continental Airlines, Inc., 466 F.2d 1374 (10th Cir. 1972) (motion for permissive intervention in sex discrimination case made six weeks before trial was properly denied).

The cases cited by appellants on the question of timeliness of intervention are all distinguishable.

The reference in Appellants' Brief at 9 to Wolpe v.

Poretsky, 144 F.2d 505 (D.C. Cir. 1944), cert denied, 323 U.S. 777 is taken out of the context of that case. Appellants' Brief, at 9, cites that case for the proposition that intervention may be allowed after judgment "to preserve some right which cannot otherwise be protected." 144 F.2d at 508. Appellants' Brief failed to state that the "right" in Wolpe was "expressly recognized by Section 5-422 of the Code" and that the intervenors in Wolpe were given "the direct right to enjoin the unlawful construction of a building." 144 F.2d at 507. Indeed, the District of Columbia Circuit's analysis began with the threshold question of "what rights are given to adjoining property owners by a zoning order." 144 F.2d at 507. In the case at bar, appellants have no independent rights or cause of action and appellants admit as much. Appellants' Brief at 4-5, 8. Accordingly, the Wolpe rationale clearly supports the decision of the District Court in the instant case.

NAACP v. New York, 413 U.S. 245, 93 S. Ct. 2591 (1973), relied on by appellants at pages 9 and 16 of their Brief is harmful to their cause. There, the Supreme Court affirmed denial of a motion to intervene made only three days after judgment compared with a delay in the instant case of 19 days from the Affirmative Action Plan, five months from the November, 1973 Order, ten months from the June, 1973 Order, fifteen months after trial and over three years from the commencement of these suits. Also, it is clear from that decision that intervenors in NAACP had an

independent right as shown by their filing a related suit under the same Act whereas here appellants have not even claimed such right. The Court stated that the progress of the suit, while not solely dispositive, is to be considered as a factor in assessing timeliness, together with a review of the circumstances. 93 S. Ct. at 2603. Appellants here, like the NAACP there: (1) knew or should have known of this case years ago; (2) appellants, like the NAACP, could have sought intervention earlier (at least as early as November, 1973 when certain alleged rights were created). (3) Appellants, like the NAACP, present no unusual circumstances warranting intervention (a) while personal injury is alleged no injury based on race is alleged and none has been proven; (b) there is no substantiation of charges of inadequate representation by the United States and the Administrator; (c) as Judge Bonsal noted, appellants' remedy "if any" lies elsewhere and appellants could pursue such claims as they want to in other forums (A4a-5a); (d) Judge Bonsal noted that appellants can make complaints to the Administrator (A4a-5a) and (e) the defendants are enjoined from discriminating. (4) Intervention would greatly disrupt this litigation and the operation of the Union.

In short, since the arguments for intervention in NAACP which were stronger than those of appellants were insufficient, appellants' arguments must fail.

Appellants failed to justify their tardiness on the basis of criteria cited by them, e.g., the standards suggested in Hodgson v. United Mine Workers of America, 473 F.2d 118 (D.C. Cir. 1972) (the purpose for which intervention is sought, the necessity for intervention as a means of preserving applicants' rights and prejudice to those already in the case.)

The Union would be greatly prejudiced by the proposed intervention. The administrative burden on the Union is already intolerable and would be exaggerated if whites as well as nonwhites would have to be subject to the detailed reporting, correspondence and recordkeeping provisions of the District Court's Order (See, e.g., reports and correspondence set forth and described at A82a-84a, 90a, 94a, 116a-121a, 135a-143a). Likewise, it would be intolerable for defendants to be held accountable for each hire and layoff of any employee, white or nonwhite. See, e.g., plaintiffs' demanding posture in this case. A73a-82a, 85a-88a. Appellants appear to be even more exacting and less sympathetic for the need of the Union to carry on its normal business. See, e.g., motion for contempt, not supported by plaintiffs or the Administrator. A122a; 135a (Affidavit of Sheeran).

In addition, the Hodgson intervenors had an independent, substantive right granted by statute to protect and they could have brought their own suit to protect those rights (473 F.2d at 122, 128) whereas intervenors have no such rights Appellants' Brief at 4-5.

In Hodgson, the first motion to intervene was made prior to judgment and even under the unique factual situation of that case (the intervenors were not notified of the denial of their motion) their second motion preceded the fashioning of relief; in the case at bar, appellants' motion came not only years after the suits began, but after the Decision and Order of June, 1973, after the Order of November, 1973 and after the March 29, 1974 Affirmative Action Plan which had been written after painstaking efforts by the District Court and all parties. A3a. Appellants here have no interest in the subject matter of the case as did the intervenors in Hodgson, and have no excuse for failure to intervene previously as did the Hodgson intervenors. Intervention after the imposition of relief also establishes the prejudice to existing parties sufficient to deny intervention regardless of the timeliness question. As to the adequacy of representation by existing parties, the U.S. Attorney's Office and private plaintiffs' counsel meet the tests of adequate representation set forth in Hodgson, 473 F.2d at 130 in that they (1) were victorious and fared well in comparison with the results in other civil rights cases, (2) already obtained relief with which appellants have no complaints (Appellants' Brief at 8) and (3) in addition to the lack of substance in appellants' degrading the role of the U.S. Attorney's Office no such allegations can even be seriously raised as to the Administrator who had only one "client"--the District Court and only one aim--to enforce the Affirmative Action Plan. A65a.

System Federation No. 91 v. Reed, 180 F.2d 991 (6th Cir. 1950) cited in Appellants' Brief at 11-12 is readily distinguishable from the case at bar. That decision was premised on the fact that the intervenor was a protected member of the plaintiff class (180 F.2d at 998) whereas appellants here are clearly not members of the plaintiff class of nonwhites. Appellants' Brief at 4-5. Also, the District Court there allowed intervention, found that the intervenor's rights were violated and found defendants in contempt (180 F.2d at 994) whereas Judge Bonsal, fully familiar with this protracted litigation denied intervention, acknowledged that as whites the intervenors were not within the protected class and denied the contempt motion A4a-5a; A149a.

Finally, it is clear that the intervenor there could have brought his own action whereas appellants here admit they cannot, Appellants' Brief at 4-5.

Cascade Natural Gas Corporation v. El Paso Natural Gas Company, 386 U.S. 129 (1967) cited in Appellants' Brief at 12-15, 22 is distinguishable on the grounds that there the District Court's decree was violative of the earlier Supreme Court decision in the case (376 U.S. 651) and those intervenors complained of the lower court's decree, whereas in the instant case the District Court's decree is not challenged by appellants (Appellants' Brief at 8). In addition, the Supreme Court ruled that the intervenors

there had an interest in the subject matter of the suit, whereas here, appellants have demonstrated no interest in racial discrimination in this Title VII case.

Nor can the failure of the Justice Department in Cascade to advocate or implement the Supreme Court's mandate so as to question the adequacy of their representation in Cascade, serve as a basis for questioning the role of the U.S. Attorney's Office here; as to the role of the Administrator, his very function is to act for the Court and to the extent he does things the appellants disagree with, they are really questioning the Decree. However, appellants cannot and do not challenge the Decree because they would then be admitting to their deplorable delay and laches in seeking to claim non-existent "rights".

Trbovich v. United Mine Workers of America, 404 U.S. 528 (1972) is relied upon in Appellants' Brief at 17-18, 20 for the proposition that intervention may be permitted where there is no real prejudice or burden created thereby upon existing parties and that the Government may not be an adequate representative of private interests; neither proposition applies to the case at bar since existing parties and the judicial process would be injured by appellants' intervention and because appellants' "rights" cannot exceed or differ from those of the plaintiff class and the Government for if they do differ, it is not an interest in the subject matter of the suit. Compare 404 U.S. at 537 ("so long as that intervention is limited to the claims of illegality presented

by the Secretary's complaint"). Here, unlike in Trbovich where the intervenor was the complainant before the Secretary of Labor (404 U.S. at 592) appellants admittedly have no statutorily protected rights so that they may claim only rights accruing to nonwhites and it cannot be said that nonwhites are inadequately represented. Unlike the intervenors in Trbovich, appellants do not seek additional relief and certainly are too late to assist in presenting evidence and argument regarding racial discrimination. 404 U.S. at 529-530. The Trbovich decision was grounded in a careful analysis of the legislative history of the Landrum-Griffin Act; the legislative history of Title VII, especially the defeat of the Cahill Amendment, 110 Congressional Record 2593, precludes allowing appellants to intervene.

POINT II. APPELLANTS HAVE NO RIGHT TO INTERVENE IN THIS CASE.

Rule 24(a) establishes that an intervenor claim (1) "an interest relating to the property or transaction which is the subject of the action" and (2) that he "is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest" (3) "unless the applicants' interest is adequately represented by existing parties."

Appellants fail to meet any of these requirements.

A. Appellants Have No Interest In The  
Property Or Transaction Which Is  
The Subject Of The Action.

Judge Bonsal, in denying appellants' motion  
held that:

"These consolidated actions were brought  
under Title VII of the Civil Rights Act of 1964.  
The purpose of the Court's Order of June 21,  
1973 and of the Affirmative Action Plan was to  
correct past discrimination in the steamfitting  
industry with respect to nonwhites and to  
establish procedures to prevent such discrimina-  
tion in the future." A3a

Judge Bonsal concluded that appellants' remedy, if  
any, must lie elsewhere since their claims do not raise issues  
under Title VII." A5a Since the District Court judgment  
is founded on Title VII, it follows that no rights for  
appellants can properly have been created.\*

Appellants admit that they had and have no rights  
under Title VII. Appellants' Brief at 4-5, 8. There are  
no "rights" created for appellants by the Court's Orders.  
The District Court, to prevent more favored treatment for  
whites than for nonwhites, precluded any possible reversion  
to practices found to be adverse to nonwhites. The relief  
appellants claim cannot have been validly imposed under  
Title VII unless designed to protect nonwhites. See, e.g.,

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\*The Union's appeal from the Affirmative Action Plan might  
include a challenge to the District Court's jurisdiction to  
include in its order those sections appellants rely upon as  
creating their alleged "rights".

A175a in which the District Court stated that the purpose of the relief in this case is to assist nonwhites. To the extent any appellants may benefit from procedures specified in the Affirmative Action Plan, that is totally incidental to this case and to the Affirmative Action Plan which both concern discrimination against nonwhites only.

The entire Affirmative Action Plan is aimed at assisting and helping nonwhites, e.g., paragraph 3 establishes goals for nonwhite membership A65a; paragraph 15, which indicates that the admission procedures "are for the purpose of achieving the goals hereinbefore set forth in paragraph 3" A40a; paragraph 26 which provides that "[t]o ensure the achievement of the minimum annual goals set forth in paragraph 3, the Union with the consent of the Administrator may limit and fix ratios for admission of new members." A45a; paragraph 33 which provides for the possibility of additional orders "to ensure equal employment opportunities for nonwhites." A72a.

Nonwhite membership is clearly the central provision of the June 21, 1973 Order of the District Court as well. A60a, paragraph 8; A63a, paragraph 27 (plaintiff class defined).

Appellants' alleged sympathy for plaintiffs is an afterthought and a sham. Not an iota of evidence was presented and not a single witness from appellants' alleged "class" participated during the trial in this case. Indeed, appellants' interest was viewed by plaintiffs as adverse to the plaintiffs.

See, e.g., A172a, an exhibit introduced by plaintiffs to show that appellants' alleged class benefited by the alleged racial discrimination.

Appellants' alleged "rights" are conditional at best; they can and must vanish according to the Affirmative Action Plan, the mechanism which allegedly created those rights. The Administrator, as agent for the District Court, is responsible for implementation of the Order. Obviously, if every "qualified" white was admitted to membership, the goals set by the Court would never be reached and the entire wage rate and structure of good working conditions would collapse to the detriment of every party in this case, except the employers. A103a-107a, 98a, 175a.

McDonald v. E. J. Lavino Company, 430 F.2d 1065 (5th Cir. 1970) cited in Appellants' Brief at 22 is clearly distinguishable. That case involved a motion to intervene made only one day after judgment whereas appellants' motion was made four months after the November, 1973 Order they rely upon and 19 days after the filing of the Affirmative Action Plan. Further, in McDonald the court found that it was "undisputed that" intervenors there were "entitled, as a matter of substantive right, to receive satisfaction of its subrogation claim pursuant to the Mississippi statute." 430 F.2d at 1070. Here appellants have no substantive independent rights, and they admit it. Appellants' Brief at 4-5, 8. Appellants' motion certainly does not, as inter-

venors in McDonald did, "have a special nature...to intervene for the limited purpose of asserting a subrogation interest in a fund..." 430 F.2d at 1071. Finally, in McDonald there was no upset to the judicial process nor prejudice to existing parties whereas here this multi-party litigation with lengthy proceedings would be upset by an additional party and existing parties would be prejudiced by intervention (plaintiffs by having the thrust of the Order, written for the benefit of nonwhites, directed for non-Title VII purposes and the Union by having an already intolerable administrative burden increased and by further intrusion into the internal affairs by a group which admittedly has no independent substantive rights to assist.) Donaldson v. United States, 400 U.S. 517 (1971); Tilley Lamp Company, Ltd. v. Thacker, 454 F.2d 805 (5th Cir. 1972); Horton v. Lawrence County Board of Education, 425 F.2d 735 (5th Cir. 1970).

Appellants' Brief hints that appellants possess unknown rights under some federal statute; they do not. Appellants seek to give the impression that only their sympathy to plaintiffs claims and respect for the District Court's decision making process kept appellants from claiming those "rights"; in reality, appellants have no valid rights to claim here or under other federal labor law or else why have they not been raised many years before. The short answer is that appellants' claims have been repeatedly rejected by Congress, and in desperation, appellants seek to ride into the union hall on plaintiffs' backs. Again, if any

such rights exist under another statute, appellants are guilty of laches, and must argue their points in a different case. A4a-5a.

Appellants have no independent Title VII rights. See Decision denying motion to intervene, A4a-5a; appellants' admission that they have no Title VII rights, Appellants' Brief at 4-5, 8; Harper v. Kloster, 486 F.2d 1134 (4th Cir. 1973); United States v. Bethlehem Steel, 446 F.2d 652, 665 (2d Cir. 1971); Marshall v. Plumbers Local 60, 343 F. Supp. 70 (E.D. La. 1972). The legislative history of Title VII shows that Congress did not intend to and did not create the sort of rights appellants claim.

Representative Cahill and New Jersey proposed an amendment to Title VII designed to expand the scope of the Act to "permit any qualified person to become a member of a union;" he did not want to limit the Act's prohibitions to discrimination on the basis of race, color, creed or national origin. That amendment was defeated. 110 Congressional Record 2593-2595.

Appellants have no valid cause of action under the Landrum-Griffin Act (Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §411 et seq.). The "bill of rights" in that Act guarantees union members equal treatment and union democracy; that Act does not regulate who should or should not be a member. Abrams v. Carrier Corporation, 434 F.2d 1234, 1250 (2d Cir. 1970), cert. denied, 401 U.S. 1009 (1971); Santos v. Bonanno, 369 F.2d 369, 370 (2d Cir.

1966); Hughes v. Local 11, 287 F.2d 810 (3rd Cir.) cert denied 368 U.S. 829 (1961). The legislative history of the Act shows that appellants do not have a valid claim. Moynahan v. Pari-Mutual Employees Guild of California, 317 F.2d 209, 210 (9th Cir.), cert denied, 375 U.S. 911 (1963).

Appellants have no valid cause of action for membership under the Taft-Hartley Act (National Labor Relations Act, 29 U.S.C. §141 et seq.); Section 8(b)(1)(A) of that Act empowers a union to make "its own rules with respect to the acquisition and retention of membership."

As to appellants' unfounded allegations of loss of employment, Sections 8(b)(2) and 8(a)(3) of that Act may protect appellants' job opportunities, but claims under those sections must be made to the National Labor Relations Board. San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959); Abrams v. Carrier Corporation, supra, 434 F.2d at 1253.

Appellants have no valid cause of action for admission to membership based on the "duty of fair representation" since that duty, enforceable under Section 301 of the Taft-Hartley Act, concerns only the negotiation and administration of a collective bargaining agreement. Local 100, Plumbers v. Borden, 373 U.S. 690 (1963); Local 207, Iron Workers v. Perko, 373 U.S. 701 (1963); Abrams v. Carrier Corporation, supra 434 F.2d at 1254.

To the extent any of the above statutes do confer rights upon appellants, their remedy "if any" is elsewhere in another case and perhaps before another forum. Appellants'

obvious laches, as well as the lack of substance, perhaps explains their failure to seek such other relief.

B. Disposition Of The Action Will Not  
Impair Appellants' Ability To  
Protect Their Interest.

Appellants have no interest in the property which is the subject matter of the action. Appellants contend that they have great sympathy for plaintiffs, but plaintiffs are already represented by two sets of able counsel--they do not need more representation (and perhaps they need less). Appellants are interested in themselves, not plaintiffs.

As to the protection of appellants' own alleged "rights" those alleged "rights" are claimed to exist solely by virtue of the Affirmative Action Plan, the vigorous enforcement of which remains the duty of the Administrator. Appellants' "rights" are not impaired by their non-intervention. Edmonson v. State of Nebraska, 383 F.2d 123 (8th Cir. 1967). The incidental, conditional "rights" appellants claim to the extent not fulfilled by the Administrator and the District Court, simply do not exist. The District Court implicitly adopted this interpretation in denying appellants' groundless motion to intervene and rash motion for contempt. The denial of the contempt motion (A149a) eliminates

appellants' allegations that their rights were violated under the November, 1973 Order. A38a-39a. See A34a (Affidavit of Sheeran, Secretary-Treasurer of the Union concerning compliance with the Court's Orders); A37a (June 23, 1973 Order, last paragraph of section 11, regarding Court's direction of admission procedures through the Administrator.)

C. Appellants' Interests Are Adequately Represented By Existing Parties.

In addition to the Administrator, existing parties will and have represented appellants' alleged interests.

Thus, the United States Attorney's Office is not a mere private litigant; it is not likely to trample on any individual's rights. United States v. Local 638, et al. (Sheet Metal Workers Local 28), 347 F. Supp. 164, 165 (S.D.N.Y. 1972); State of Illinois v. Bristol-Myers Company, 470 F.2d 1276 (D.C. Cir. 1972); Hatton v. County Board of Education of Maury County, Tennessee, 422 F.2d 457 (6th Cir. 1970); Ionian Shipping Company v. British Law Insurance Company, 426 F.2d 186 (2d Cir. 1970).

The employers, who have stopped at no lengths to flood the steamfitting job market, have argued in favor of plaintiffs, and in favor of appellants at various times, toward their end of weakening this Union and depressing

wages and conditions by adding more employees of any race to the work force. See, e.g., A175a.

The Union too has advanced the cause of appellants' alleged class by strenuously opposing racial quotas. See A22a-23a (Affidavit of Brennan). On the other hand, appellants in order to excuse their laches in seeking to intervene, have remarkably not opposed the very quotas which injure their alleged class. See, e.g., A30a (Affidavit of Farrell)\* The Union's appeal not only shows adequate representation, but renders appellants' motion even more untimely. A4a; Wright & Miller §1916, p. 583.

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\*It was unnecessary for the District Court to make any class determination regarding appellants' "class" and it did not do so. Appellants would be hard pressed to qualify themselves as a class, and ever harder pressed to qualify themselves as an adequate representative thereof in light of their acceptance of quotas.

CONCLUSION

For the reasons set forth herein, the decision of the District Court denying appellants' motion to intervene as of right should be affirmed and the appeal should be dismissed.

Dated: New York, New York  
January 24, 1975

Respectfully submitted,

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New York, New York 10017  
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Of Counsel,

Richard Brook

STATE OF NEW YORK )  
COUNTY OF NEW YORK) ss.:

Preston Anderson, being duly sworn,  
deposes and says that deponent is not a party to the action,  
is over 18 years of age and resides at 980  
Simpson St Bronx New York 10439

That on the 24 day of January, 1975,  
deponent personally served the within Brief for Dependent-  
appellee Enterprise Association & Smith Local 638 of U.A.  
upon the attorneys designated below who represent the  
indicated parties in this action and at the addresses below  
stated which are those that have been designated by said  
attorneys for that purpose.

By leaving 2 true copies of same with a duly  
authorized person at their designated office.

By depositing        true copies of same enclosed  
in a postpaid properly addressed wrapper, in the post office  
or official depository under the exclusive care and custody  
of the United States post office department within the State  
of New York.

Names of attorneys served, together with the names  
of the clients represented and the attorneys' designated  
addresses.

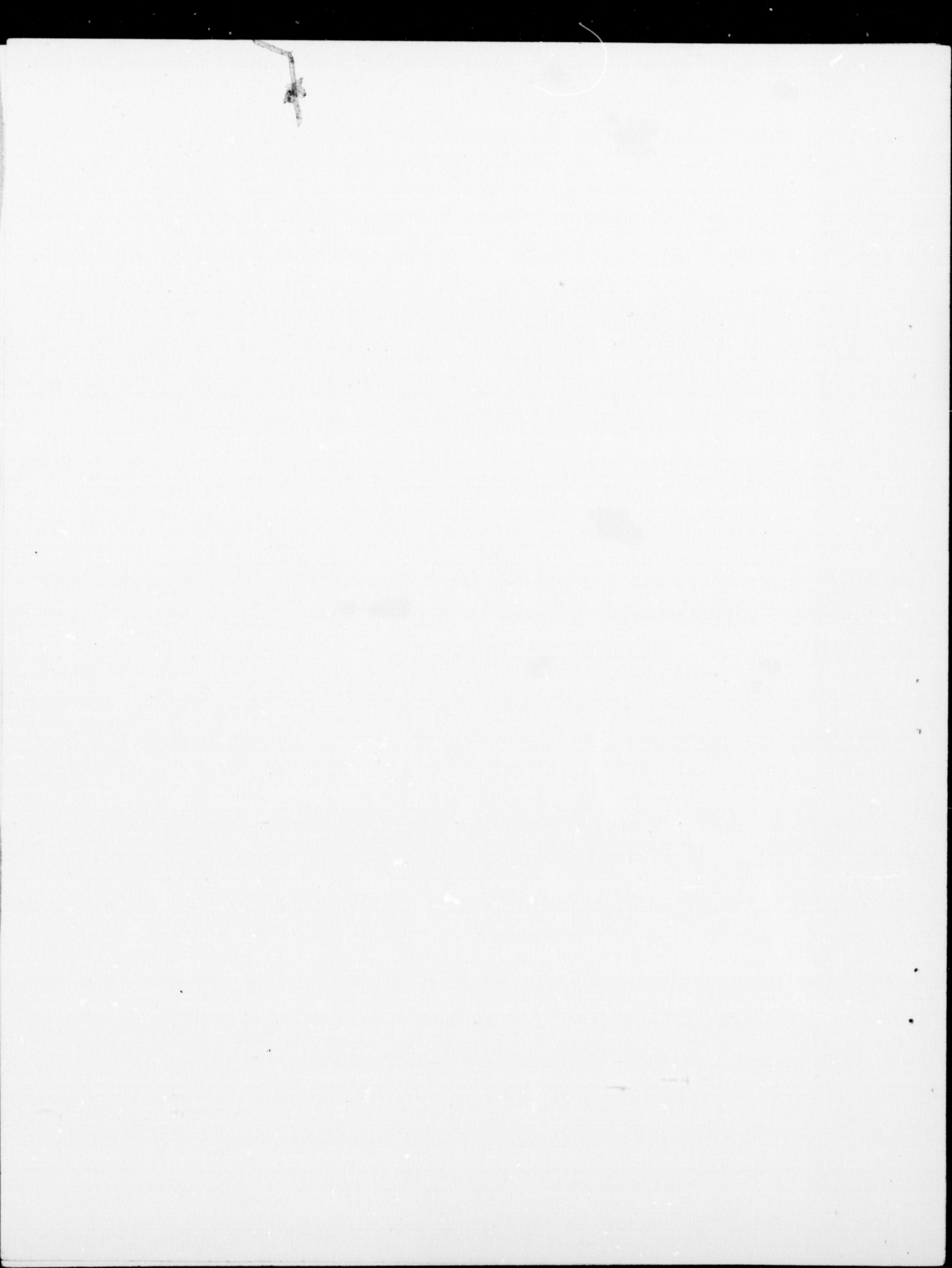
Burton M. Hall Esq (S).  
attorneys for applicants to  
Interview - appellants,  
401 Broadway

Preston Anderson

Sworn to before me this

24 day of Jan, 1975 Michael DeSantis

MICHAEL DeSANTIS  
Notary Public, State of New York  
No. 03-0930908  
Qualified in Bronx County  
Commission Expires March 30, 1978



Received 2 copies of the within  
Brief for Defendant Appellee Enterprise Assoc.  
this 24 day of Jan, 1975. Steamfitters Local  
638 of U.A.

Sign Thomas A. Shaw Jr.  
Thomas A. Shaw Jr. Esq.  
For: Bred Abbot Morgan Esq(s).

Att'ys for Mechanical Contractors Assn. of  
N.Y. Area Joint Apprenticeship Committee

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Brief for Defendant Appellee Enterprise Assoc.  
this 24 day of Jan, 1975. Steamfitters Local  
638 of U.A.

Sign Dennis R. Yeager for James R. Yeager  
Dennis R. Yeager  
For: \_\_\_\_\_ Esq(s).

Att'ys for Plaintiff Appellants Riess et al

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638 of U.A.

Sign Burton H. Hall Esq(s).

Att'ys for Applicants to Intervene Appellants

Received 2 copies of the within  
Brief for Defendant Appellee Enterprise Assoc.  
this 24 day of Jan, 1975. Steamfitters Local  
638 of U.A.

Sign Shirley J. Thornton  
For: Steven J. Glasman Esq(s).

Att'ys for Plaintiff Appellee U.S.A. (EEOC)

